IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1134 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SAIYADALI HASAMALI KADRI
Versus
SHAHEDABANU A MAJID KADRI AND ANOTHER

==========

Appearance :
MR BY MANKAD for Applicant.
MR LR PATHAN for Opponent Nos. 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/02/2006

ORAL JUDGMENT

By filing this Civil Revision Application under Section 115 of Civil Procedure Code, the applicant, who is original applicant of Civil Misc. Application No.49 of 1999 filed before Court of learned Assistant Judge at Veraval, has challenged the order passed by the learned Judge on 27th

April, 2001 by which aforesaid application of the applicant is rejected. The applicant herein moved an application under Section 7 A-B and Section 25 (1) of the Guardians and Wards Act for appointing him as guardian of minor Shamabanu. The case of the applicant – original applicant is that he is the husband of opponent No.1 and opponent No.2 is his father-in-law. By filing aforesaid application, the applicant herein has prayed that he may be handed over the custody of minor Shamabanu aged about eight years. Marriage between the applicant and opponent No.1 was performed on 13-1-1985 at Veraval. Out of said wedlock, three daughters were born, namely, Sajidabanu Saiyedali aged about 13 years, Shahinbanu Saiyedali aged about 11 years and Shamabanu aged about eight years. In the year 1994, the applicant went to U.A.E. and it seems that his wife left the house of the applicant, which is at Una. Some dispute also arose between the parties and wife also instituted proceedings under Section 125 of the Criminal Procedure Code for maintenance. Subsequently, the parties entered into some agreement and as per the same, the custody of minor Shamabanu was to be handed over to the applicant, however, since the wife refused to hand over the custody, ultimately, the husband – present applicant moved aforesaid application before the trial Court for getting custody of minor child. Learned trial Judge after recording the evidence and after considering the arguments of the parties rejected the claim of the husband. It is the said order, which is under challenge in present Civil Revision Application under Section 115 of Civil Procedure Code.

By appreciating the evidence, the trial Court came to the conclusion that the applicant has not taken any care of minor Shamabanu since her birth. Trial Court also found that it is in the interest

of minor child that her custody should be allowed to be kept with mother – respondent No.1 herein. It is found that the applicant is coming from U.A.E. at the interval of about six months and stays at Una only for eight to fifteen days. Trial Court has rightly found that the main consideration in such cases is the welfare of minor child. Trial Court has observed in its order in paragraphs 17 and 18 as under :

> "17. So, in view of my above discussion, I am of the opinion, that when at the place of Opponents, minor Shamabanu is getting a natural love and affection from her mother as compared with the applicant. Because the place of applicant, as he do not remains in India and when particularly, minor Shamabanu do not know her father, two other sisters and her grand-mother also, she do not know, that will be a new atmosphere for her and question of getting it adjusted or not is also there.
>
> 18. So, at the end of the aforesaid discussion, I am of the view that applicant cannot be appointed as a guardian of the minor Shamabanu and he is not entitled for the possession and custody of minor Shamabanu and no possession of minor can be handed over to the applicant."

Considering the fact that after appreciating the evidence on record, the trial Court has rejected the application of the applicant, this Court in its limited jurisdiction under Section 115 of Civil Procedure Code would not like to disturb the finding of the trial Court, as the trial Court has rightly found that welfare of minor child is with her mother. Considering

the findings given by the trial Court, I do not find any substance in this application, hence, this Civil Revision Application is rejected. Rule is discharged with no order as to costs.

(P.B.MAJMUDAR, J.)

/malek